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T-142 P.012/019 F-539

Application No. 10/719,424
Amendment dated January 8, 2007
Reply to Office Action of September 19, 2006

REMARKS

Applicant has amended claims 1 and 17, and added new claims 42 and 43 to further define Applicant's invention.

In the Office Action, the Examiner has indicated that claims 33-41 are allowed. In addition, the Examiner objected to claims 3-6 and 19-22 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including the limitations of the base claim and any intervening claims. Note that claims 42 and 43 are based on claims 3 and 19, respectively, rewritten in independent form including the limitations of the base claim and any intervening claims.

The Examiner rejected claims 1-41 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-116 of U.S. Patent No. 6,849,093. Applicant is submitting concurrently with this Amendment a Terminal Disclaimer of the terminal part of any patent granted in the present application which would extend beyond the expiration of U.S. Patent No. 6,849,093. Applicant submits that the obviousness-type double patenting rejection has been overcome.

The Examiner rejected claims 1, 2, 7-18, and 23-32 (including independent claims 1 and 17) under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,821,298 to Jackson ("Jackson"). Note that Applicant has amended independent claims 1 and 17 to overcome the Examiner's rejection based on 35 U.S.C. § 102(e). Independent claim 1 now recites that "said implant end cap being rotated to engage said at least one protrusion and said recesses," and independent claim 17 now recites that "said implant end cap being rotated to facilitate receipt of said protrusions in said recess." Jackson does not disclose an implant end cap rotatable to engage said at least one protrusion and said recesses as recited in claim 1, and does not disclose an implant end cap rotated to facilitate receipt of said protrusions in said recess as recited in claim 17. As such, independent claims 1 and 17, as amended, overcome the Examiner's rejection based on 35 U.S.C. § 102(e).

In conclusion, Applicant submits that independent claims 1, 17, 33, 42, and 43 are patentable and that dependent claims 2-16, 18-32, and 34-41 dependent from

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independent claim 1, 17, or 33, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: January 8, 2007

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